

**RE: 2002-29 - Proposed Michigan Standard for Imposing Lawyer Sanctions
Public Comments – Address to the Michigan Supreme Court**

A review of recent media headlines gives ample evidence of the appearance by the Michigan Supreme Court to be indifferent to *gross* attorney/judicial misconduct. In 2002 nearly 4,500 complaints were filed by the public seeking discipline of a legal professional, yet barely 1 complaint in 80 resulted in a legal professional being 'sanctioned'. The self-regulating legal professions disciplinary agencies Attorney Grievance Commission and Judicial Tenure Commissions pattern of 'sweeping under the carpet' citizen complaints is outright violation of the public trust. Michigan citizens expect and rightfully deserve a reasonable standard of sanctioning be in effect for *all* legal professionals when the 'misconduct' is violation of the state criminal code or abuse of professional status.

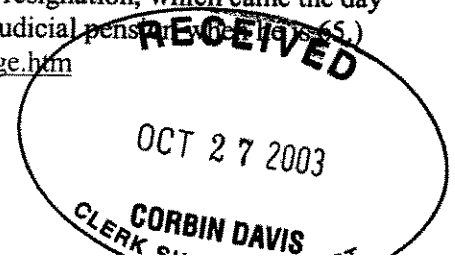
The Michigan Supreme Court is aware a genuine issue of concern exists as evidenced by the following:

- January 2003 The Michigan Bar Journal in an article titled 'Promoting Public Confidence in the Legal Profession: The State Bar of Michigan Client Protection Fund' acknowledges escalating attorney fraud within the state has left to many clients victims of their attorney's embezzlement and without recourse - rarely does attorney embezzlement result in criminal prosecution!
- June 19, 2003 The Michigan Supreme Court heard testimony in the last twenty-five years only one internal audit of the Attorney Grievance Commission was conducted and it was found to be "damning in every particular". The Michigan Bar's acknowledgement no follow up was undertaken to correct their 'omissions' is unconceivable!
- September 30, 2003 The LitiGator an online legal professional web site reports District Judge Thomas Gilbert of Grand Traverse County hypocrisy of a judge sentencing defendants for marijuana violations while indulging in the same vice himself and that information being secreted from the public by the Judicial Tenure Commission!
- October 5, 2003 The Traverse City Record reports a State Senator is considering invoking a provision of the Michigan Constitution to ouster Judge Thomas Gilbert. The Traverse City community has for over a year repeatedly expressed dissatisfaction at the appearance of bias by the Judicial Tenure Commission to investigate and sanction their peers.

Other obvious violation of public trust by Michigan's legal professionals in 2003 included:

- January 10, 2003 The family of Court of Appeals Judge Gary McDonald, Saginaw submitted Judge McDonald's resignation. A legal web site reports records this incident as 'shameful' as since July 2001 McDonald had been gravely ill with little chance of recovery. This information was deliberately concealed from Governor Engler. Judge McDonald remained on 100% paid leave with an annual salary of \$151,500.00 for 18 months. <http://radio.weblogs.com/0110436/categories/myInterests/2003/01/12.html>

January 13, 2003 Former Mt. Clemens District Judge James Scandirito was fired from his job as a senior Attorney for the State of Florida upon the state's notification he had been disbarred in Michigan five months earlier. Scandirito's disbarment was not relayed to his new employer, rather Scandirito's legal peers gave him glowing recommendations - with no mention Scandirito resigned from his Michigan judicial duties in 2000 when five women reported he made 'improper overtures' in exchange for leniency in his court. (Scandirito had been on a paid leave for nearly a year prior to his resignation, which came the day before the investigation was to begin. Scandirito remains eligible for a judicial pension with life (65.) <http://www.judicialaccountability.org/articles/dcfhiresfiresdisbarredjudge.htm>



February 7, 2003 Wyoming District Judge Jack Jelsema resigned with a generous pension just days before a judicial investigation was to begin. In 2001 the Judicial Tenure Commission publicly reprimanded Jelsema upon his found guilty of extreme delays in his court duties. Jelsema continued to be markedly lack in his duties and refused for another 18 months to cooperate with the self-regulating legal professions disciplinary agencies. http://www.freep.com/news/mich/date27_20021127.htm

February 10, 2003 Allen Park District Judge Gerard Trudel had the State approve his disability pension -- effective immediately with an annual income of \$33,528.00. Judge Trudel is 50 years old. The day the pension was announced a judicial investigation was underway for Trudel's judicial removal for excessive leaves of absence and possible criminal fraud. The Judicial Tenure Commission's Paul Fischer (who has not removed a Judge since 1998) is quoted "He (Trudel) is scamming the taxpayers". The Commission previously 'considered' repayment by Trudel for \$90,000.00 he received on a previous eight month paid leave, plus \$13,000.00 for the cost of the judicial investigation. <http://www.detnews.com/2003/wayne/0303/20/d03-113700.htm>

April 2003 Mackinaw and Luce County 92nd District Court Judge Stephen Ford was charged with fourth-degree criminal sexual conduct and common law misconduct occurring at his workplace the District Courthouse. The criminal sexual conduct count is a high misdemeanor that carries a maximum penalty of two years in prison. http://news.auho.com/news/mich/date8_20030908.htm

September 3, 2003 St. Joseph County, 45th District Court Judge James Noecker sought the community pay up to \$75,000 of his legal fees to defend himself against Judicial Tenure Commission charges of chronic alcoholism and lying to police in a traffic accident investigation. <http://www.mlive.com/news/kzgazette/index.ssf?/base/news-0/1062688801152110.xml>

The Michigan Supreme Court has been previously *fully advised* of public concerns of the failure of the legal professions self-regulating disciplinary agencies to sanction attorneys in a manner consistent with public values. Sadly, when an attorney's engages in criminal acts against a client the attorney relies on professional peers to 'grant them immunity', rather than a professional sanction. The legal profession professes to be a self-regulating profession; to many Michigan residents it appears to be a self-serving UNREGULATED profession. The Michigan Supreme Court should take immediate decisive measures to protect citizens from the criminal acts by the increasingly large numbers of legal professionals.

Respectfully submitted,



Jan Eathorne
3990 Lotus Drive
Waterford, MI 48329
October 24, 2003

Resources included:

Michigan Bar Journal, January 2003 Promoting Public Confidence in the Legal Profession; The State Bar of Michigan Client Protection Fund by Victoria V. Kremski.

Michigan Supreme Court web site, Public Hearing June 19, 2003, Letter from Allan Falk dated January 28, 2003

The LitiGator website <http://litig8r.net>, September 30, 2003 The Other Gilbert Case, no writer indicated.

Traverse City Record-Eagle, October 4, 2003 Judge May Yet Be Ousted by Keith Matheny.
The LitiGator website <http://litig8r.net>, January 12, 2003 A Shameful Episode no writer indicated.

Detroit Free Press, May 1, 2002 Court Wants Exam of Recovering Judge, by Dawson Bell.

Palm Beach Post, January 16, 2003 DCF Hires, Fires Disbarred Judge, by Kathleen Chapman.

Macomb Daily, March 3, 2000 New Sex Claim Surfaces Against Ex-Judge James Scandirito, by Chad Halcom.

Grand Rapids Press, January 8, 2003 Liver Aliment Keeps Him From Work, Judge Jelsema says: But the Jurist Refuses to Talk About the Problems That Lead to his Suspension from the Bench, by Doug Guthrie.

Grand Rapids Press, January 17, 2003 Judge Jelsema in the Dock, Editorial.

Detroit Free Press, January 11, 2003 Judge Called Harasser Could Face Punishment, by David Ashenfelter.

Detroit News, March 20, 2003 Scathing Report Says Judge Should Go, by Maureen Feighan.

Detroit Free Press September 8, 2003 Sex Complaint Filed Against UP Judge, by David Ashenfelter.

Kalamazoo Gazette, September 2, 2003 Judge to Return Today Dispite Complaint, by Kathy Jessup.

WWMT.com Channel 3 News, September 17, 2003 County Asks Embattled Judge to Pay His Own Legal Bills, by Mark Albert.

Traverse City Record-Eagle, September 26, 2003 Gilbert Banned for 6 Months, by Patrick Sullivan.

Grand Rapids Press, September 28, 2003 State Supreme Court Suspends Judge for Smoking Pot; District Judge Thomas Gilbert Suspension Will be 6 Months After a Witness Saw Him Smoking Marijuana at a Rolling Stone Concert, byline by Associated Press.

Macomb Daily, January 13, 2000 Snail-Paced Action (or Was it Inaction?) by the Michigan Supreme Court Allowed a 41 B District Judge James A. Scandirito to Escape a Judicial Misconduct Penalty, Editorial.

Traverse City Record-Eagle, November 24, 2002, Ball is in Judge's Court, So to Speak, by editor Bill Thomas.

Grand Rapids Press, October 4, 2003 Judicial Panel Misses Mark: Supreme Court Judge Right to Toughen Penalty for Pot-Smoking Judge. Editorial

Traverse City Record-Eagle, September 30, 2003, Commission Defends Judges, but Not Justice, Editorial.

The Grand Rapids Press, January 6, 2002 A Soft Touch from High Court; Macomb Jurist Behavior Justifies Removal From Office, Editorial.

Detroit Free Press, June 15, 1994 State Gives Ironclad Secrecy to Accused Lawyers, by Joe Swickard.

By Victoria V. Kremiski
Assistant Regulation Counsel,
State Bar of Michigan

Promoting Public Confidence in the Legal Profession: The State Bar of Michigan Client Protection Fund

How many times have we heard people say, "You lawyers all stick together" or "A law license is just a license to steal"? We're lucky if these comments are made in a half-joking fashion, but all too often they are accompanied by a sneer.

These comments upset us as lawyers, because we know that no profession does a better job at self-regulation. We are aware of the disciplinary actions taken by the Michigan Attorney Grievance Commission and the Attorney Discipline Board, and as a sign that our profession is open and healthy, we sometimes debate the appropriateness of the actions taken by these disciplinary agencies.

But many lawyers do not realize that each of us supports another entity whose purpose is to promote public confidence in the legal profession—the State Bar of Michigan Client Protection Fund. The Client Protection Fund was created by the State Bar of Michigan in 1966 to reimburse clients whose funds were embezzled or misappropriated by their lawyers. The goal of the Client Protection Fund is to promote public confidence in the administration of justice and the integrity of the legal profession by compensating those who have been victimized by dishonest lawyers. All 50 states have created client protection funds. The Client Protection Fund is financed out of the annual membership dues of Michigan lawyers.

The State Bar of Michigan Client Protection Fund Standing Committee, comprised of 12 volunteer members, meets about four times a year to review the claims filed and

make a recommendation to the State Bar of Michigan Board of Commissioners as to whether the claims should be paid or denied. The Board of Commissioners will review the recommendations and issue a final decision on the claims.

In order to be eligible for payment, a claim must result from the dishonest conduct of a Michigan lawyer and must arise out of a lawyer-client relationship or a fiduciary relationship between the lawyer and claimant. The lawyer must have been an active member of the State Bar of Michigan at the time of the dishonest conduct, or under an interim order of suspension or revocation issued not more than six months prior to the dishonest conduct.

Six states have no "caps" on claims and attempt to reimburse claimants in full for their losses.¹ Most states, like Michigan, have "caps" on the amount paid per claim and the amount the fund will pay, in total, for the dishonest conduct of one particular attorney. Pursuant to Rule 12(b) of the Michigan Client Protection Fund Rules, the maximum amount of reimbursement a claimant can receive from the Client Protection Fund is \$25,000. The maximum amount the Client Protection Fund will pay to all claimants victimized by a specific attorney is \$100,000. Until recently, the Client Protection Fund never had claims presented to it that exceeded the \$100,000 cap. In 1999, the Client Protection Fund received claims by the clients of a Northern Michigan attorney that approximated \$300,000. The claimants shared the \$100,000 Client Protection Fund reimbursement on a pro rata basis. In 2001–

2002, the Client Protection Fund received claims regarding three attorneys that exceed the \$100,000 maximum; two of the attorneys are accused of misappropriating in excess of one million dollars. One of these attorneys has admitted to misappropriating over one million dollars from his clients. Another attorney is charged with 26 counts of embezzlement and forgery.

Some of the situations presented are especially heart-wrenching. Last year, two claims were made by the personal representative of minor children whose attorney misappropriated from a revocable living trust set up for the children after the death of their parent. In another instance, an attorney misappropriated the funds a community raised on behalf of two minor children whose mother died in a car accident.

In 2001–2002, 168 claims were filed with the Client Protection Fund, almost triple the amount of claims filed in the previous year. This is in addition to the previously mentioned 150 percent increase in the number of attorneys who misappropriated in excess of \$100,000 from their clients.

Substance abuse and mental illness have always been a factor in attorney misconduct. Now with the advent of legalized gambling, it appears that gambling addiction may be fueling the dramatic increase in the number and severity of Client Protection Fund claims.

The dramatic increase in claims is occurring at a time when the Client Protection Fund is the least financially equipped to handle such an increase. Michigan's caps on claims are among the lowest in the nation, especially when ranked in comparison to

states of similar size and population.² This leaves claimants sometimes receiving only a fraction of the money they lost as a result of the dishonest conduct of their attorneys.

Like all programs within the Bar funded by the "fixed income" of membership dues,³ the Client Protection Fund has been subject to budget constraints. The Fund has not received an appropriation through the State Bar of Michigan budget for the last three years. Although the Client Protection Fund currently has a positive balance, it will be bankrupt within three years if no other appropriation is forthcoming and claims continue to be paid at the current rate.

The 1999 Conference of Chief Justices National Action Plan on Lawyer Conduct and Professionalism recommends that all client protection funds create a structure to ensure a stable source of funding for client protection funds and to make full reimbursement of client claims the goal of each state's fund. To that end, the Client Protection Fund Standing Committee has proposed that

the State Bar of Michigan Client Protection Fund be funded through a yearly, per lawyer assessment of \$15 per year, as opposed to the uncertainty of whether the Client Protection Fund will receive an appropriation through the general State Bar of Michigan budget each year. The Committee also proposes that the caps be raised from \$25,000 to \$50,000 per claimant, and \$100,000 to \$200,000 per attorney to more fully compensate those who have been victimized by the "bad apples" of our profession.

You may ask yourself why should the honest attorneys have to pay for the misconduct of others. Robert Welden, General Counsel for the State Bar of Washington, answered that question as follows:

Attorneys are privileged to be members of a self-regulating profession. With that privilege comes the responsibility of protecting the public when one of the persons the Bar has assured the public may be trusted as a lawyer turns out to be unworthy of that trust. The Fund is a last resort when no other remedies are available to the victims.⁴

The assessment proposal is expected to be presented to the Representative Assembly at its February 2003 meeting for its consideration. If you would like a copy of the proposal or if you have any questions regarding the State Bar of Michigan Client Protection Fund, contact the State Bar at 1-800-968-1442. ♦

Victoria V. Kremksi is assistant regulation counsel at the State Bar of Michigan. Ms. Kremksi is responsible for investigating and litigating unauthorized practice of law cases, handling ethics inquiries, and serving as staff liaison to the Client Protection Fund and Unauthorized Practice of Law Committees. Prior to joining the State Bar, Ms. Kremksi practiced law privately, primarily handling family law and personal injury cases.

FOOTNOTES

1. Connecticut, Delaware, District of Columbia, Massachusetts, Montana, and Oklahoma
2. For the detailed chart, contact the State Bar of Michigan at (800) 968-1442.
3. Membership dues have remained unchanged since 1993.
4. *Proposed APR 15: Lawyers' Fund for Client Protection*, Robert D. Welden, Washington State Bar News: August 1993.

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JAN 29 2003

CLERK SUPREME COURT

January 28, 2003

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Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48933

Re: ADM File No. 2002-38, Proposed Amendment of SBR 4(a)

1. Part one of the proposed amendment is to make a separate charge to every lawyer of \$15 annually to underwrite the operations of the Client Security Fund. The ABA website, to which the Court's administrative order directs interested persons, provides model rules for CSFs and an explanation for those rules. In particular, those rules track the existing Michigan CSF rules in declaring that there is no legal right to make a claim against the CSF.

That being so, the ABA offers this rationale:

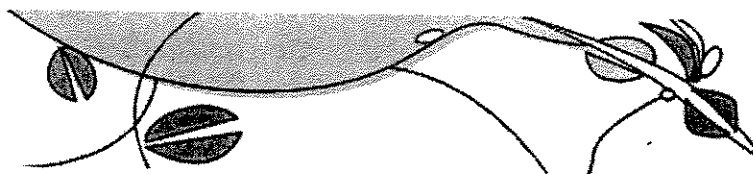
The Fund is not a guarantor of honesty and integrity in the practice of law. Dishonest conduct by a member of the bar imposes no separate legal obligation on the profession collectively, or on the Fund, to compensate for a lawyer's misconduct. The Fund is a lawyer-financed public service, and payments by the Board is discretionary. If the profession collectively owes no duty to the public to compensate for a lawyer's dishonesty, then, like other "public services" of the organized bar, such as advertising the wonderfulness of the legal profession to the general public, or lobbying the legislature, it is a form of First Amendment activity, which cannot be imposed on members who object. *Keller v State Bar of California*, 496 US 1; 110 S Ct 2228; 110 L Ed 2d 1 (1990); *Wooley v Maynard*, 430 US 705; 97 S Ct 1428; 51 L Ed 2d 752 (1977).

Either the profession has such a duty, in which case there should be a legal right of recovery from the CSF up to the legal limit, with judicial review, or this extra-legal combination of the Star Chamber and Santa Claus should be an entirely voluntary operation. Undersigned couns can live with either scenario, but not with the continued imposition of an illegal tax to support the exercise of caprice and arbitrariness by a few select members of the bar with funds extorted from all. If others wish to delegate the State Bar to make gifts of their money to some and no others, let them do so; undersigned, however, is perfectly capable of making his own charitable benefactions, and prefers to exercise his own discretion.

No doubt the State Bar will respond claiming that the operations of the CSF have been reproached. As usual, it will be able to offer no empirical evidence to support such because there is no judicial review or other objective, empirical study to test the consistency, or evenhandedness of the CSF. As with ICLE's and the Grievance Admin

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 Tuesday, September 30, 2003

The other Gilbert case

The Michigan Supreme Court has issued its ruling on pending disciplinary action against District Judge Thomas Gilbert of Grand Traverse County, who made the strategic error of smoking marijuana at a Rolling Stones concert in Detroit. This ruling is notable, not for the sanction or the offense, but for the revelation of what appears to be bitter infighting among the Justices.

The offense was not contested. Judge Gilbert admitted that he had partaken of the weed at the location specified in the complaint. The issue was the level of punishment that was warranted.

In this state, the Judicial Tenure Commission is charged with developing the facts underlying a complaint against a judge, and recommending action to the Supreme Court. The Court may accept, modify, or reject the discipline recommended. If the judge is willing to enter into a consent agreement with the JTC rather than contest the charge, he can do so but retains the right to withdraw from the consent agreement if the Court is not willing to accept the terms. (This is a new development since the amendment of MCR 9.225. Under the previous version of the rule, a judge who agreed to a consent order in lieu of contesting the charge could not withdraw his consent even if the Court was not willing to accept the JTC's agreement on the sanction.)

A quick resume of the developments is as follows:

- In April 2003, the Court rejected the first proposed consent agreement by a 5-2 vote, finding the proposed sanction of a 90-day suspension without pay, with credit for 28 days spent in drug rehabilitation program, insufficient. Four of the Justices, a majority, ordered the case returned to the JTC for a stronger sanction, without specifying what that sanction should be. The fifth Justice, Weaver, dissented from that decision, voting that the judge be removed from office. She wanted her dissent reported, but the

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remaining Justices voted to keep the Court's ruling, and Weaver's dissent, confidential.

- In September 2003, the Court again addressed the case after it was resubmitted by the JTC with no essential change in its recommendation. This time, the Court, by a 6-2 vote, ruled that the judge should be suspended for six months, without pay, and without credit for the 28 days spent in treatment. Weaver again dissented, voting for outright removal, and again the ruling and her dissent were kept confidential by the Court.

Under the rule, the judge had a period of 14 days within which to withdraw his consent. In this case, Judge Gilbert did not do so. Thus, on September 25, the Court's order became final, and it was then publicly announced. It was only then that Weaver's two dissents and two contrasting opinions from her colleagues came to light.

Weaver's vote for outright removal reflects her outrage at the hypocrisy of a District Judge sentencing defendants for marijuana violations in cases coming before him while indulging in the same vice himself, and at the judge's apparent unwillingness to admit the scope of his violation of trust, as manifested by his attempt in public to portray this episode as a one-time event, while having privately admitted to the JTC and the Court that he continued to use marijuana "twice per year" since becoming a judge. It was no doubt also influenced somewhat by the fact that the judge in question serves in her home base, Leelenau County.

Weaver's dissent, and the sharp exchange between her and Justices Taylor and Young, was based on her characterization of the Court's confidentiality orders as a "suppression" of the Court's action and her dissents. Weaver takes the position that the court rule requires that the Court act on the JTC's recommendation, and that its action in doing so must be public. She pointed out that the rule provides that

The Supreme Court shall review the record of the proceedings **and file a written opinion and judgment**, which may accept or reject the recommendations of the commission, or modify the recommendations by imposing a greater, lesser, or entirely different sanction.

She further declared:

The current court rules do provide that if the Judicial Tenure Commission does not file a formal complaint, its members and staff "may not disclose the existence or contents" of a judicial disciplinary investigation. But that confidentiality provision does not apply to the decisions of the Supreme Court. Thus, on April 14 and September 11, 2003, when each justice decided whether to accept, reject, or modify the recommended discipline, those decisions should not have been secreted from the public.

The requirement of a written opinion and judgment, in her view, precludes any effort to keep the decision confidential at any point in the proceedings.

Taylor and Young, by contrast, noted that the parties to the consent agreement expected that it would remain confidential until the order became final under the rule. Young, in particular, accused Weaver of attempting to mislead the public about the confidentiality issue by accusing the majority of "suppressing" the rulings and her dissent. He commented:

Until this case, our dissenting colleague has respected the confidentiality of this process and has seen no need to publish to the world her final judgment on the matter until the normal process had concluded. Consequently, I am shocked that our colleague has suggested that her fellow justices have engaged in a "cover up" when our suppression orders were necessary to prevent her from issuing a public denunciation of Judge Gilbert before the process outlined in our rules had been completed.

Even a judge who has failed to live up to the responsibilities of office is entitled to a fair process. Justice Weaver stands alone in her position that she is entitled to publish her conclusions in a case before the Court itself has acted. In Michigan, an accused still has a right to a trial before an execution, not the other way around.

In like manner, Taylor commented:

. . . It must not be forgotten that this settlement and consent process involving Judge Gilbert, the Judicial Tenure Commission, and this Court, was understood by all to be entered into on the condition of

confidentiality.

I thought we could not violate that understanding. Nor do I understand why it would have been a good idea to be public throughout. The reason is that this process, which has resulted in Judge Gilbert's acceptance of the recommended discipline, could have required the Judicial Tenure Commission to adjudicate this matter had Judge Gilbert rejected the recommended discipline. Had the commission done so, it would have eventually made a discipline recommendation to this Court. If our views had been published, that would undoubtedly prejudice the commission proceedings and, importantly, be unfair to Judge Gilbert.

I do not pretend to know which position is more meritorious. It is well understood in this state that Justice Weaver does not stand on the same ground as the rest of her "conservative" colleagues do, and that there is sometimes some friction between them arising from that fact. For this one Justice, who has served for many years on this Court, to stand alone against the remaining Justices on this rather important though somewhat publicly obscure point of procedure is, to put it mildly, quite remarkable.

Update 10-5-03 -- The Traverse City Record Eagle [reports](#) that State Senator Michelle McManus is considering invoking a seldom-used provision of the Michigan Constitution which permits the ouster of a sitting judge by a 2/3 vote of both houses of the Legislature.

(The reference to "the other Gilbert" pertains to the Court's recent order denying Geoffrey Fieger's motion to recuse five of the Justices from hearing his client's appeal, [discussed here recently](#). That case, coincidentally enough, was *Gilbert v. Daimler-Chrysler*.)

11:43:00 PM

Nat Hentoff and abortion

I was surprised to discover that Nat Hentoff, the leftist columnist for the leftist Village Voice, is pro-life. His current column addressing a couple of abortion-related issues is published [in the Washington Times](#). Presumably the Voice would not carry this one.

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TRAVERSE CITY
RECORD EAGLE

October 4, 2003

Judge may yet be ousted

Lawmakers want more answers before deciding

By **KEITH MATHENY**
Record-Eagle staff writer

TRAVERSE CITY - Some state legislators are considering invoking a Constitutional provision to oust suspended 86th District Court Judge Thomas Gilbert from office.

State Sen. Michelle McManus, R-Lake Leelanau, was among three legislators who signed a letter to Gilbert on Friday that asked him to answer a series of questions regarding his marijuana use.

If and how Gilbert answers those questions, McManus said, could determine whether she pushes ahead with a removal plan.

She said Gilbert has 30 days to answer the questions or "we will find it necessary to introduce a resolution for removal from your judgeship."

Also signing the letter were state Rep. Ken Bradstreet, R-Gaylord, and state Sen. Alan Cropsey, R-DeWitt, Chairman of the Senate Judiciary Committee.

State officials suspended Gilbert for six months without pay on Sept. 25, nearly a year after a witness spotted him smoking marijuana at a rock concert in Detroit.

McManus said Article 6, Section 25 of the state constitution allows for the removal of a judge from office if both houses of the state Legislature call for it by at least two-thirds majorities.

McManus said she would await Gilbert's answers, then consult again with Bradstreet and Cropsey to determine any further course of action.

Gilbert did not respond to a message seeking

comment left at his home Friday.

The letter asks Gilbert to respond to a number of questions, including:

- How many years has Gilbert smoked marijuana?
 - How many times has Gilbert used marijuana since assuming his judgeship?
 - From where did Gilbert acquire the illegal substances?
 - Has Gilbert referred his marijuana providers to proper legal authorities, and has the judge himself ever provided another with marijuana?
 - Has Gilbert ever served as a judge within 18 hours of smoking marijuana?
 - Has Gilbert's alcohol consumption led him to use other illegal substances during his time on the bench?
- Gilbert has cited alcohol as a factor that led to his marijuana use.

The legislators also ask that Gilbert disclose all documents from his Judicial Tenure Commission hearings "for the public benefit."

During the judicial misconduct investigation, Gilbert admitted he used marijuana "approximately two times per year and has continued to do so since becoming a judge," according to the commission's order.

McManus said she wanted to ask the questions after receiving numerous inquiries from constituents and after reviewing the Judicial Tenure Commission's orders. She said she sided with Justice Elizabeth Weaver, who dissented in the commission's September order, saying testimony should be made public and calling for Gilbert's removal from the bench for the remainder of his term.

"As a public citizen, I certainly have more questions, because I have not been given all the answers. It's been suppressed; it's confidential," McManus said.

McManus said she hoped Gilbert would resign, something the judge has said he will not do.

"I wanted to do something for the moms, the dads, the school administrators and teachers who have to tell kids that they can't smoke pot because it's illegal, and then explain why a judge can get away with it at minimal penalty after admitting to it," said McManus.

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A shameful episode

Gongwer reported on Friday:

Illness Prompts McDonald To Resign From Appeals Court
-- Court of Appeals Judge Gary McDonald has resigned from office, about a year and a half after serious illness prevented him from working. The resignation effective January 3 creates a vacancy on the 28-member court that will be filled by appointment by Governor Jennifer Granholm.

This seemingly innocuous item is misleading. This judge did not "decide to retire" now that a Democrat is in office. The decision to submit his retirement at this point was made by his family -- he cannot act for himself.

The Gongwer entry conceals what has become a very shameful episode in Michigan judicial politics. Judge McDonald succumbed to a massive stroke in July 2001 and has been **comatose** (or nearly so) since that time. Despite the fact that he was entirely unable to work as a judge, and clearly would never be able to return to the bench, his family hid his condition from the Court for many months, refused to provide information about his condition when inquiries were made, pretended that his physicians predicted a recovery, and in general did everything possible to forestall any investigation of the situation. (See "[Court wants examination of recovering judge](#)", Detroit Free Press, May 1, 2002.) This permitted the family of an incapacitated judge to continue to draw his judicial salary of over \$150,000 per year **for 18 months**, and to delay his retirement (he was a Democrat appointee in 1988) until after then-Gov. John Engler had left office. What is surprising is that Engler, the master tactician, was unable to do anything about the situation.

The Judicial Tenure Commission finally began proceedings in May 2002 to remove Judge McDonald from office, but there was no sign of any action taken by the JTC at any time thereafter. The JTC proceedings are confidential until a decision is made, but clearly it should not have taken more than a month to verify that this judge's medical condition was permanent and totally incapacitating, and that he was altogether unable to carry out his duties.

12:35:29 PM #



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Court wants exam of recovering judge

He has been off work since July heart attack

May 1, 2002

BY DAWSON BELL

FREE PRESS STAFF WRITER

LANSING -- The Judicial Tenure Commission has been asked to review the condition of a veteran and well-liked state Court of Appeals judge who has been off work for 10 months after a serious heart attack and stroke.

Judge Gary McDonald, 62, of Saginaw could be forced to retire if the commission and Michigan Supreme Court find that he is physically disabled and unable to perform judicial duties.

McDonald had a heart attack and stroke July 2 and remains bedridden, his son Gavin McDonald said Tuesday. Doctors have told the judge's family that recovery could take two years, he said.

Judge McDonald's wife submitted a letter to State Court Administrator John Ferry in early April suggesting that she would initiate her husband's resignation on Feb. 3, 2003, if he is unable to work by then.

But Ferry and Court of Appeals Chief Judge William Whitbeck appear unwilling to wait.

If McDonald leaves the bench this year, Gov. John Engler would name a replacement. If he retires next year, the new governor would name McDonald's successor.

Whitbeck said in a statement that, while McDonald's illness is a "tragedy for his family and for the court, there are procedures that must be followed in circumstances involving

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disability."

Whitbeck called McDonald "a longtime valued member of the court" who is widely respected by his colleagues.

Ferry said this week that court officials have been rebuffed in attempts dating to last year to obtain more information about the judge's condition and prognosis. Recently, the court administrator's office made arrangements for an independent medical exam but it was canceled by McDonald's family, Ferry said.

Ferry declined to discuss his office's request for an investigation to the tenure commission. But under state court rules, the commission can require a judge to undergo an examination.

Joseph Regnier, a Brighton attorney and former head of the tenure commission, said cases like McDonald's are rare but not unprecedented.

There are no standards for level of seriousness of disability or length of time away from work that warrant removal, Regnier said, and the cases that do arise are generally resolved before formal action by the commission.

"It tends to be on a case-by-case basis. If there is some indication from the judge or a physician that a full restoration of health is expected, then the commission normally stands aside," he said.

McDonald was appointed to the appellate court by Gov. James Blanchard in 1987. He was a district and circuit court judge in Saginaw County for 15 years. As one of 28 judges on the Court of Appeals, McDonald's salary is \$151,500 a year.

Contact DAWSON BELL at 313-222-6609 or dbell@freepress.com.

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Citizens for Judicial Accountability**News &
Articles****DCF Hires, Fires Disbarred Judge**

By Kathleen Chapman
Palm Beach Post Staff Writer
January 16, 2003

WEST PALM BEACH -- Five months after Michigan revoked a judge's law license for "predatory sexual misconduct," he was still working as a lawyer for the Florida Department of Children and Families.

Officials said they did not know about the investigation when they hired James Scandirito in June 2000 to represent the agency in Palm Beach County child abuse and neglect cases.

A panel of three attorneys in Michigan found in July that Scandirito, 59, had abused his position by trying to coerce two women into sexual relationships in exchange for leniency in his court.

Michigan disbarred Scandirito on July 25, and that state's Attorney Grievance Commission sent its findings to the Florida Bar. Long aware of Michigan's investigation of Scandirito, the Florida Bar has since opened its own case.

DCF spokesman Bob Brooks said he cannot explain how the agency missed the incident.

"That is a question that not only do I not know the answer to, if I did I still couldn't tell you," Brooks said.

Supervisors checked Scandirito's criminal background and references but were not told of the case in Michigan.

Brooks would not say when or how they found out. State officials supported a local decision to fire Scandirito this week, he said.

A Michigan prosecutor, who has known since April that Scandirito was working in Palm Beach County, said he can't believe the former judge had been able to get -- and then keep -- his job with DCF.

"I can't imagine why anybody in the state of Florida thinks this is the guy we need to have protecting the interest of children and their parents, some of whom are presumably women," said Donald Campbell, associate counsel with the Attorney Grievance Commission in Michigan. "It's

In its July 2002 report, a Michigan panel wrote that Scandirito delayed sentencing a woman for driving with a suspended license in 1998. The Macomb County circuit judge invited her to lunch and told her he could help "clear some of this up," according to the report. He fondled and kissed her, the report says, then continued a sexual relationship with her for two to three months.

In another case the same year, Scandirito went to lunch with a woman who pleaded guilty to drunken driving, on the pretense of asking her to volunteer with Students Against Destructive Driving, the report states. He improperly touched her and told her to keep their meeting secret, according to the report.

In his Michigan hearing, Scandirito presented a letter from a therapist who diagnosed him with "Impulse Control Disorder" and "Attention Deficit Disorder, Adult Residual Type."

According to the report, Scandirito "testified that he learned a lot about himself and that his conduct was wrong and inappropriate." He further said that "he was extremely remorseful and believes he has been rehabilitated."

Joseph Cozzolino, chief assistant prosecutor in Macomb County, said Wednesday that he never pursued a criminal investigation because the victims did not want to press charges.

Scandirito resigned from his position as judge Jan. 7, 2000, after the state began investigating his conduct, and said he was moving to Florida. He joined the Florida Bar in 1974 and was an active member when DCF checked on him in 2000.

Scandirito is appealing the Michigan disbarment.

In May 2000, Scandirito submitted a job application with no mention of the investigation. Under "Reason for Leaving" his Michigan job, he wrote only, "Retired to Florida."

Scandirito included Chief Judge John Foster of Mount Clemens as a reference. DCF notes in his personnel file show that Foster left a message on the agency's voice mail saying Scandirito "does well in the courtroom" and "relates well to people." The notes do not include a mention of the investigation for sexual misconduct. Foster could not be reached for comment Wednesday.

On June 14, 2000, District Legal Counsel Laura Cohn and Managing Attorney Linda Spector congratulated Scandirito on his new position as senior attorney with DCF. He started at \$39,900, a significant pay cut from the judge's salary the *Detroit Free Press* reported: \$113,192.

In April 2002, Scandirito testified before the panel in Michigan. He described his job with DCF and said he had already been punished.

"I have suffered humiliation, embarrassment, loss of most of my friends, as well as loss of my chosen profession," he wrote. "I was forced to move to Florida to avoid more media scrutiny."

He added that the investigation in Michigan could affect his new job: "I

have been told by the Fla. Bar that any suspension of my Michigan Bar license will probably equate to a like suspension in Florida," he wrote in April.

The Florida Supreme Court requires all lawyers under investigation by the Bar to notify their employers, said Joel Klaitz, a Fort Lauderdale investigator with the Bar.

Scandirito, who lives in Boca Raton, did not return calls Wednesday. But Therese Scandirito, his wife of 35 years, said her husband is a kind man who was good at his job.

"We were stunned -- why not? Why wouldn't we be?" his wife said. "He's done nothing in the state of Florida, and nothing has been settled in the state of Michigan."

His wife said DCF did not tell him why he was fired.

"Truly, he has no idea," she said.

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Friday 24 October, 2003

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New sex claim surfaces against ex-judge James Scandirito

Chad Halcom, -- Macomb Daily Staff Writer

March 03, 2000

Woman says she feared losing her children if she refused his advances. Scandirito resigned his district court post in January rather than face a hearing before the Judicial Tenure Commission.



A criminal probe into a former Mount Clemens judge will apparently explore allegations that a Harrison Township woman had sex with him because of his position of authority, and because she feared he could jail her and cause her to lose her children.

Michigan State Police hope to complete within weeks their investigation of former 41B District Judge James Scandirito. When that happens, officials said, the state Attorney General's office will decide whether to pursue any charges.

The alleged victim, a single mother of four from Harrison Township, claims in a pending lawsuit that Scandirito had her perform oral sex on him and she continued a "forced sexual relationship" with him for months, because, in part, of fear of his authority.

The woman is one of five women who brought allegations against the judge to the Michigan Judicial Tenure Commission, which was prepared to discipline Scandirito until he resigned his court seat in January.

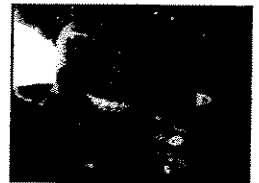
"(She) is a single parent with four children and was facing jail time if she did not cooperate with the defendant District Court Judge," the lawsuit states.

"(S)he reasonably believed that he could sentence her to a period of incarceration wherein she would lose not only her freedom but also custody of her children."

Reached at her home, the woman refused to comment about her case this week. Her attorney, Richard Dimanin, did not return repeated phone calls seeking comment.

However, state police confirmed that all of the allegations that have surfaced against Scandirito have been reviewed in the nearly complete criminal probe

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"Let me just say this. We are interviewing anybody and everybody we know about," state police Detective Lt. Ive Edwards said.

The woman's name also surfaced in a complaint against Scandirito by the state Judicial Tenure Commission. Both records describe a similar sequence of events.

She apparently pleaded guilty in January 1998 in Scandirito's court to a charge of driving with a suspended license, second offense. Sentencing was deferred, and while the case was pending she was part of an unrelated police report of a drunken driver on her lawn.

According to court documents, Scandirito allegedly used this report to obtain her phone number, and called her about "viewing the crime scene" for that case. He allegedly arranged a lunch date with her in August 1998 and propositioned her for sex.


State and local officials say that could be a basis for a crime. Using authority over someone to obtain sexual relations, even if there is no overt force, could give rise to a charge of third-degree criminal sexual conduct, a 15-year felony.

Scandirito, 56, formerly of Harrison Township and now living in Florida with his wife, was suspended from office last April by the Michigan Supreme Court and resigned in January, a few days before the tenure commission was to seek a more permanent penalty for him.

He has settled lawsuits with three other women who allege he made sexual advances toward them.

Scandirito couldn't be reached for comment. His attorney, Peter Peacock, did not return phone calls.

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☐ *The Grand Rapids Press (Grand Rapids, MI), Jan 8, 2003 pD1*

Mark

**Liver ailment keeps him from work, Judge Jelsema says;
But the jurist refuses to talk about the problems that led to
his suspension from the bench. (City & Region)**

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Byline: Doug Guthrie / The Grand Rapids Press

WYOMING -- Wyoming District Judge Jack Jelsema said Tuesday the ailment that kept him from work for at least three months is a liver disorder from which he has begun to recover.

But Jelsema declined to talk about a state Supreme Court order that has suspended him with pay and forces him to a hearing later this month. Jelsema said he will argue against allegations by the state's Judicial Tenure Commission that threaten to remove him from the bench.

Jelsema, a 24-year judge who was re-elected without opposition in November, was suspended Dec. 30 for failing to act on a number of cases without explanation, and for not detailing the reason for his absence.

He previously was censured in 2001 by the Supreme Court, for failing to act on issues involving two divorce cases.

The Judicial Tenure Commission, which oversees the conduct of judges, now contends Jelsema has delayed decisions on seven cases and has ignored orders intended to solve his "pattern of inaction, delay or neglect."

Answering the door at his Wyoming home Tuesday evening, Jelsema, 57, moved slowly, carefully placing his footsteps. He is noticeably thinner than in the past.

"No, I didn't want to make any comment," said Jelsema, explaining he ignored previous attempts to contact him by telephone.

Wyoming District Court Administrator Jay Murphy has said Jelsema was too ill this fall to meet demands for paperwork or explanations for why he

allegedly allowed cases to languish. Jelsema also missed an appointment in October, arranged by the Judicial Tenure Commission, for a psychiatric examination by a Southfield doctor.

Judicial Tenure Commission Attorney Paul Fischer said Jelsema has declined to provide information about his illness. Murphy and others, including lawyers who work in the Wyoming court, had said the nature of Jelsema's illness was a mystery to them, too.

Jelsema said Tuesday that complications from a liver disorder, which he declined to identify, caused a fluid buildup in his abdomen.

"I felt it coming in September. I'm over it now and I'm coming back from that," Jelsema said. "As for the other thing, I'd rather not make comments until it gets straightened out."

Jelsema expressed confidence he will return to the bench after the hearing on Jan. 22 in Lansing.

Former Washtenaw County Circuit Judge Karl V. Fink, serving as a special master at the hearing, is to forward his findings and a recommendation to the state Supreme Court, which could range from reinstatement to removal. A decision by the high court probably will be announced in March.

Meanwhile, Wyoming's other judge, Steven Timmers, has been handling the court's criminal and civil case load with help from his father, retired Wyoming District Judge Richard Timmers.

Arrangements also were made Tuesday with Grand Rapids District Court to lighten the workload.

Grand Rapids judges were expected to soon handle all Wyoming criminal arraignments through video links with the Kent County Jail.

Article CJ96248451

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☐ *The Grand Rapids Press (Grand Rapids, MI)*, Jan 17, 2003 pA10
Mark

Judge Jelsema in the dock. (Editorial)(Editorial)

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Byline: The Grand Rapids Press

The wheels of justice in the case of Wyoming District Court Judge Jack R. Jelsema should finish turning before anyone asks that the judge be permanently removed from the bench. But enough is known so far to be disappointed in him and to insist on a change in his behavior.

Mr. Jelsema is scheduled to appear for a state hearing on Monday, called to inquire into the Michigan Judicial Tenure Commission's charges that he has disregarded state orders to end his "pattern of inaction, delay or neglect" and that he has delayed decisions on numerous specific cases.

According to the Tenure Commission, the judge also has been anything but cooperative with investigators: declining to provide reasonable explanations for inaction on cases, refusing to fill out Tenure Commission forms and missing a psychiatric appointment set up for him by the commission. Mr. Jelsema says he has been sick but, the commission says, he has furnished no documentation. Questioned by a Press reporter at his home, Mr. Jelsema also declined to identify his ailment.

Reacting to the charges, the Michigan Supreme Court on Dec. 30 suspended Judge Jelsema with pay. Two years ago, the high court censured him for not acting on two divorce cases. The court will await the results of Monday's hearing before issuing any new penalties, which could include a permanent ouster from the court seat he has held for 24 years.

The public is left to wonder about the reasons for the judge's conduct. At a minimum, he should cooperate fully in his remaining interactions with the Tenure Commission and the Supreme Court. A forthright explanation for the people of Wyoming is in order as well.

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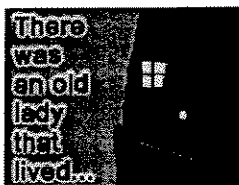
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Judge called harasser, could face punishment

January 11, 2003

BY DAVID ASHENFELTER

FREE PRESS STAFF WRITER

An Allen Park district judge harassed court employees, threatened perceived enemies, abused the court's vacation policy and filed a bogus workers compensation claim so he could be paid while suspended without pay for earlier judicial misconduct, a state fact finder concluded this week.

Judge Gerard Trudel's "volatility, mood swings, anger and intimidating tactics detrimentally affected the operation of the 24th District Court," said retired state appeals Judge Roman Gribbs in a report to the Michigan Judicial Tenure Commission.

Gribbs, who presided over Trudel's misconduct hearing last October, said Trudel took more than seven months of vacation the past three years and tried to disguise it as mental disability leave. Gribbs said Trudel's attempt to obtain workers compensation benefits early last year during a 90-day suspension without pay "is clearly an attempt to misrepresent and borders on fraud."

Though Gribbs didn't recommend Trudel's removal from office, his 40-page report cited the cases of other judges who were removed for similar conduct. Gribbs sided with judicial investigators on all major charges against Trudel, 49, who has been suspended with pay from his \$138,272-a-year job since July.

Trudel, a former city councilman and a judge since 1993, was suspended for 90 days without pay in January 2002 for sexually offensive

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Judge called harasser, could face punishment3age ofp

behavior at the court and misusing court property.

Trudel, who has denied the charges and served as his own lawyer during the disciplinary hearing, could not be reached for comment Friday.

The tenure commission's executive director, Paul Fischer, declined to comment on the findings Friday. He said the commission will schedule a hearing to review Gribbs' report and decide whether to ask the Michigan Supreme Court to discipline Trudel.

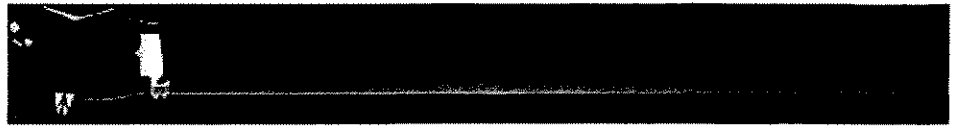
Gribbs said Trudel:

- Engaged in sexually inappropriate and racially insensitive conduct with female court employees, and hugged and kissed them against their wishes. After hiring the court's only black employee in the mid-1990s, the judge said in a conversation, "Now, I have my token black."
- Drove court employees into opposing camps by giving preferential treatment to some employees while treating others harshly and disrespectfully.
- Prohibited probation officers and other court employees with whom he was angry from entering the courthouse or his office to conduct court business and threatened others with firing.
- Used court funds to lease an inadequate building for court use without telling Allen Park city officials after they refused to pay his legal fees in an earlier judicial misconduct case. Gribbs said Trudel banished court workers to the building, even though it had no running water, working toilets or a certificate of occupancy.
- Filed lawsuits against nine people last October, one week before they were scheduled to testify against him at his misconduct hearing.

Contact **DAVID ASHENFELTER** at 313-223-4490 or ashenf@freepress.com.

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Thursday, March 20, 2003

Scathing report says judge should go

Allen Park's Trudel 'unfit' for bench, state panel says.

By Maureen Feighan / *The Detroit News*

ALLEN PARK -- A state commission is recommending the removal of an Allen Park district judge who it says referred to himself as God, threatened court employees, and feigned depression problems while taking months-long trips to California while still being paid.

In a scathing 62-page opinion released last week, the Michigan Judicial Tenure Commission recommended the removal of 24th District Court Judge Gerard Trudel from office, repayment of \$12,777.33 in costs stemming from the commission's investigation and a fine of \$90,000.

"We have considered the totality of Judge Trudel's manipulative and fraudulent conduct, his malingering, his disrespect for the disciplinary process, his volatility... and its overall effect on the judicial system and the public," the opinion states. "The record in this case obviously compels the conclusion that he is unfit to be a judge."

The recommendations mark the latest and what could be the most damaging blow for Trudel, who was earlier involved in a conflict with Allen Park officials in which they accused him of blackmail over plans to audit the court's budget. The matter was investigated by the state Attorney General's Office and later dropped.

But if the Michigan Supreme Court approves the commission's recommendations, Trudel could be removed from office for good. No hearing date has been set.

Trudel could not be reached for comment.

According to the commission's report, Trudel feigned depression over a one-year period, saying he was unable to do his duties while spending his time in Newport Beach, Calif. The report also says Trudel threatened his employees, threatened Allen Park employees and leased a building in Melvindale out of the court's budget without the city's knowledge.

A hearing on the charges against Trudel was held in October but he failed to show up after the third day, citing medical problems.

You can reach Maureen Feighan at (734) 354-4047 or mfeighan@detnews.com.

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MICHIGAN NEWS BRIEFS: Monroe County -- 911 tapes are given to teens' attorney

September 8, 2003

Prosecutors who contend that two teens ambushed South Rockwood's police chief in an Internet sex scandal have turned over 911 tapes to the teens' attorney.

Judge Mark Braunlich of Monroe's 1st District Court issued a gag order Friday prohibiting attorney Paul Swanson from releasing the information to the news media.

There's been a discrepancy over who called 911 first after South Rockwood Police Chief Kevin Walters shot and wounded a 17-year-old at 1:30 a.m. July 25.

The chief says he called 911, but Swanson says 19-year-old Matthew Schieda called first.

Schieda of Newport and friend Keith Hall of Romulus are charged with assault with intent to rob while armed for allegedly promising sexual favors to the chief in exchange for \$50. The pair met Walters over the Internet the night of July 24 and then met him in person a few hours later.

At some point, Walters shot Hall in the chest after Hall allegedly assaulted him with a baseball bat. Walters, 40, of Flat Rock, is not charged with a crime and prosecutors have maintained he acted in self-defense.

Hall and Schieda are free on bond.

Swanson has maintained that the chief fled the scene -- the Ritter Elementary School parking lot next to the South Rockwood police station -- after the shooting and later returned.

A preliminary hearing is scheduled for Thursday in the case against the teens.
By Ben Schmitt

ST. IGNACE

Sex complaint filed against UP judge

An Upper Peninsula district judge has been charged with professional misconduct for allegedly sexually harassing court employees.

The Michigan Judicial Tenure Commission issued the complaint last week against 92nd District Judge Steven Ford, who serves Luce and Mackinac counties.

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The complaint said Ford repeatedly kissed and fondled a court employee between May 2002 and January. It said he also fondled a court reporter during the past four or five years and that he used the court's computer in March to download pornographic materials from the Internet.

In April, Ford, 54, was charged with fourth-degree criminal sexual conduct and common law misconduct in office. The criminal sexual conduct count is a high misdemeanor that carries a maximum penalty of two years in prison. The other charge carries a maximum penalty of up to five years in prison.

Ford was arraigned on the charges May 1 and freed on \$1,500 bond. The status of the charges was unclear Sunday. Ford and his lawyer could not be reached comment. *By David Ashenfelter*

INTERLOCHEN

Fine-arts camp locked in a battle over name

What's in a name? Plenty, if you ask the Interlochen Center for the Arts, which is locked in a legal battle with a summer camp with a very similar name.

The 75-year-old fine-arts camp near Traverse City is accusing the Interlocken International Camp in New Hampshire of violating its national trademark.

The dispute has dragged on for two years, partly because of a change in courts and an unsuccessful attempt at mediation.

Now, educators, alumni of both camps and national camping groups are asking Interlochen to soften its position and take another try at settlement.

Interlocken got its start in 1961 when Richard Herman, a teacher, took over a camp in southern New Hampshire. *By the Associated Press*

LANSING

Schools struggle to address dropout rate

Unreliable records and a lack of data from a new state system designed to track dropouts have left Michigan schools struggling to address the chronic problem, officials said.

Schools and state leaders said they cannot solve the problem without knowing how many students are leaving. But for decades, schools have failed to produce reliable dropout and graduation rates. And the new state system has not yet produced data.

"If people knew the true numbers of dropouts, they would be horrified," said Mary Reimer, information specialist for the National Dropout Prevention Center in Clemson, S.C.

Michigan is one of 13 states that does not report data to a federal clearinghouse for education statistics, and therefore was ineligible last year for up to \$100,000 in dropout prevention funds.

The most current figures are from the 2001-2002 school year. The state said its system of collecting data is not working because schools are overburdened, confused and unable to submit the information.

But schools tell a different story.

Detroit Public Schools has been collecting data on a per-student basis since 1990, said spokeswoman Mike Albert.



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Judge to return today despite complaint

Tuesday, September 2, 2003

BY KATHY JESSUP
SPECIAL TO THE GAZETTE

A formal complaint charging St. Joseph County Circuit Judge James Noecker with chronic alcohol abuse and giving false statements about an accident is one of only two public actions initiated this year by the Michigan Judicial Tenure Commission against state jurists.

The judge was to return to the bench today. He has been on medical leave since the crash, and spent part of that time in two substance-abuse programs, according to the tenure commission.

According to Paul J. Fischer, executive director and general counsel of the tenure commission, the agency receives nearly 600 complaints annually, but the vast majority are "unfounded or unprovable."

In 2002, the commission received 627 complaints. Of those, four cases were forwarded to the Michigan Supreme Court for a decision on whether the jurist should remain on the bench. Another 15 ended with "private admonishments or

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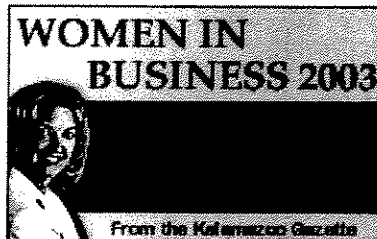
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cautionary letters" to the jurists and three more received 'public censures,"

The Judicial Tenure Commission -- which consists of judges, two lawyers and two lay people -- acts like a grand jury to determine whether there are sufficient grounds for a formal complaint, Fischer said. The next step is a hearing before a special master appointed by the state Supreme Court.

The tenure commission's Web site indicates the Noecker case is one of two formal complaints pending now. In the other, Saginaw District Judge M.T. Thompson Jr. has been charged with using his office to solicit thousands of dollars to promote two self-produced educational programs alleged to be Thompson's "personal business interests."

Complaints to the tenure commission may originate from a number of sources, including attorneys, other court officials or litigants, Fischer said. Commission staff also can initiate an investigation based on "news articles or information received in the course of a commission investigation."

Fischer said the source of the complaint against Noecker is confidential and refused to comment on whether Noecker may have been investigated previously or privately ordered into substance-abuse treatment in the past.

The formal complaint released by the tenure commission last week charges Noecker with "persistent use of alcohol," detailing Noecker's participation in four substance abuse treatment programs since 1994 and claims that "his work at the court and the business of the court have suffered as a result."

From January 2001 to January 2003, Noecker participated in the state's Judges and Lawyers Assistance Program to monitor his substance-abuse problem, the complaint said. Two months after he left that program, he crashed his Mercedes SUV into the side of Lacy's Grocery and Bait on J.S. 12, causing between \$15,000 and \$20,000 in property damage. The judge left the scene before police arrived.

Noecker denied he had been drinking before the accident and said he had one glass of vodka afterward. But an hour-and-a-half after the crash, state police found his blood-alcohol level to be 0.10, which meets the standard for drunken driving.

Noecker, through his attorney Peter Houk of Lansing, has denied the allegations. Noecker, who was not charged with driving while intoxicated, pleaded guilty to careless driving.

The commission declined to order Noecker suspended until his case is resolved.

According to Judy West-Wing, St. Joseph County administrator, the county has borne about \$13,000 in costs for bringing visiting judges to St. Joseph County to hear cases during Noecker's medical leave.

No date has been set yet for Noecker's hearing.

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County asks embattled judge to pay his own legal bills

By Mark Albert News 3 Reporter
September 17, 2003 - 9:38AM



CENTREVILLE (NEWS 3) - The St. Joseph county board of commissioners unanimously passed a resolution Tuesday asking Judge James P. Noecker to pay for his own legal expenses as he fights a three-count state complaint.

The Michigan Judicial Tenure Commission alleges that Noecker failed to do his job as the county's only circuit court judge because of "repeated relapses from alcohol problems" that climaxed March 12 when the judge admittedly crashed his

sport utility vehicle into a Sturgis general store.

Witnesses accuse Noecker of being intoxicated. Noecker told News 3 in his first interview after the incident that he did not have any alcohol to drink before the crash.

"I support the judge emotionally and spiritually," said county board chairman John Dobberteen after the vote. "But when the taxpayers speak so profoundly on an issue that they - and we - don't think is related to his job performance. We think that we had to do this."

The resolution is not binding. In fact, commissioners decided not to challenge Noecker's use of the up to \$100,000 available for legal defenses under the insurance pool maintained by the Michigan Municipal Risk Management Authority (MMRMA).

The first \$75,000 would be paid by St. Joseph county taxpayers as a sort of deductible, with the remaining \$25,000 to be picked up by the MMRMA, according to county officials.

Commissioner Monte Bordner defended the board's choice not to contest Noecker's insurance claim because it could lead to a tremendous legal battle. "I don't think anyone wants to do that, throwing good money after bad," Bordner said.

Judge Noecker's attorney, Peter Houk, told News 3 in a phone interview Tuesday night, that, "it is unfortunate that the board of commissioners, without having all the facts, has decided to act. Judge Noecker did nothing wrong.

"This man has faithfully served the county for 30 years. A judge is like anyone else - presumed to be innocent, until proven otherwise."

The first hearing into the Michigan Judicial Tenure Commission complaint was scheduled on Tuesday for Sept. 29 at 1:30 pm in the Calhoun County justice center in Battle Creek. The proceedings are open to the public.



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TRAVERSE CITY
RECORD EAGLE

September 26, 2003

Gilbert banned for 6 months

State Supreme Court issues suspension

By **PATRICK SULLIVAN**
Record-Eagle staff writer

TRAVERSE CITY - District Judge Thomas Gilbert has been suspended for six months without pay, nearly a year after a witness spotted him smoking marijuana at a rock concert.

The Michigan Supreme Court released an order late Thursday that chronicled the Court's fractious debate over what an appropriate punishment would be for the judge.

"I would remove Judge Thomas Gilbert from the bench for the remainder of his term, so I respectfully dissent from the majority's six-month unpaid suspension," wrote Justice Elizabeth A. Weaver.

During the judicial misconduct investigation, Gilbert admitted that he used marijuana "approximately two times per year and has continued to do so since becoming a judge," according to the order.

"In addition to the obvious hypocrisy of his conduct, Judge Gilbert has misled the public in his voluntary statements to the press by actively minimizing and mischaracterizing the extent of his marijuana use," Weaver wrote.

"While Judge Gilbert repeatedly smoked marijuana, he sat in judgment of others for their marijuana use, fining and jailing them for their violations of the same laws he himself was violating," she wrote.

While Weaver dissented, Chief Justice Maura D. Corrigan and Justices Michael F. Cavanagh, Marilyn Kelly, Clifford W. Taylor, Robert P. Young, Jr. and Stephen J. Markman signed the order.

In a written statement, Gilbert apologized for the

incident and blamed alcoholism for his drug use.

"As to my future, I have no present intent to resign," Gilbert wrote. "The citizens put me here to do a job and God willing I will do it to the best of my ability until it is done."

The suspension exceeded a recommendation from the Michigan Judicial Tenure Commission which suggested a 90-day unpaid suspension with credit for 28 days of paid time off, based on Gilbert's stay in a rehabilitation facility.

Gilbert puffed from a marijuana cigarette at a Rolling Stones concert in Detroit on Oct. 12. A witness reported the incident to local court officials and Gilbert then admitted using the drug.

He returned to the bench after the rehabilitation stay but with a restricted case load that did not include drunk driving or marijuana possession cases.

That restriction was to expire Oct. 1. Gilbert's suspension went into effect Thursday.

Retired District Judge James McCormick will fill in for Gilbert.

"We are very fortunate to have him be able to step right back in the saddle and help out like that," said District Judge Michael Haley, the 86th District's chief judge.

Patrick Sullivan is the reporter for crime, courts and public safety. He can be reached at (231) 933-1478, or at psullivan@record-eagle.com

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 ***The Grand Rapids Press (Grand Rapids, MI), Sept 28, 2003 pA23***

Mark

**State Supreme Court suspends judge for smoking pot;
District Judge Thomas Gilbert's suspension will be 6
months after a witness saw him smoking marijuana at a
Rolling Stones concert. (State)**

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Byline: The Associated Press

TRAVERSE CITY -- Nearly a year after a witness spotted District Judge Thomas Gilbert smoking marijuana at a rock concert, the state Supreme Court has suspended him for six months without pay.

The justices released the order late last week, showing the contentious debate they had over an appropriate punishment for Gilbert.

"I would remove Judge Thomas Gilbert from the bench for the remainder of his term, so I respectfully dissent from the majority's six-month unpaid suspension," wrote Justice Elizabeth A. Weaver.

"In addition to the obvious hypocrisy of his conduct, Judge Gilbert has misled the public in his voluntary statements to the press by actively minimizing and mischaracterizing the extent of his marijuana use," Weaver wrote. "While Judge Gilbert repeatedly smoked marijuana, he sat in judgment of others for their marijuana use, fining and jailing them for their violations of the same laws he himself was violating."

During the judicial misconduct investigation, Gilbert admitted he has used marijuana approximately two times per year, according to the order.

While Weaver dissented, Chief Justice Maura D. Corrigan and Justices Michael F. Cavanagh, Marilyn Kelly, Clifford W. Taylor, Robert P. Young Jr. and Stephen J. Markman signed the order.

In a written statement, Gilbert apologized for the incident and blamed alcoholism for his drug use.

"As to my future, I have no present intent to resign," Gilbert wrote. "The citizens put me here to do a job, and God willing, I will do it to the best of my ability until it is done."

Gilbert's term ends in 2004. It is unclear if he will run for re-election.

The suspension exceeded a recommendation from the Michigan Judicial Tenure Commission, which suggested a 90-day unpaid suspension with credit for 28 days of paid time off, based on Gilbert's stay in a rehabilitation program.

Gilbert smoked a marijuana cigarette at a Rolling Stones concert in Detroit on Oct. 12.

A witness reported the incident to local court officials. Gilbert then admitted using the drug.

He returned to the bench after the rehabilitation stay but with a restricted case load that did not include drunken driving or marijuana possession cases. That restriction was to expire Oct. 1.

Gilbert's suspension went into effect Thursday.

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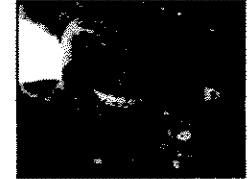
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Snail-paced action (or was it inaction?) by the Michigan Supreme Court allowed 41B District Judge James A. Scandirito to escape a judicial misconduct penalty.

If there was anything worse than the depressing circumstances that led to the self-serving resignation of former 41B District Judge James A. Scandirito, besides his own written admission that some of the allegations against him "are true," it was the state's snail-like approach at resolving the judicial mess that first unfolded 11 months ago.

When Scandirito resigned last Friday from the State Bar of Michigan and the bench that he had been suspended from since April 9, he was able to beat state officials to the punch before they served him a judicial misconduct penalty.

In submitting his resignation to Gov. John Engler and state court administrator John Perry in Lansing, the district court judge said he and his family were relocating to Florida, and, therefore, he was resigning as judge and would no longer practice law in Michigan.

It was a smart move by the ex-judge and onetime sports star at Mount Clemens High School.

His well-designed resignation came hours before members of the Michigan Judicial Tenure Commission were to meet to discuss how to resolve the allegations against the judge.

When learning of Scandirito's resignation, the tenure commission voted 7-1 to dismiss its proceedings against him.

There were allegations that Scandirito had used his position as a judge to proposition at least five women between 1995 and mid-1998. Three of the women sued him in Macomb Circuit Court and the U.S. District Court in Detroit and settled their lawsuits for undisclosed sums.

Commission Executive Director Allan Sobel said he was satisfied with the commission's decree "in light of the fact he's not a judge any longer in Michigan."

By taking the side-door exit in his 11th hour resignation, Scandirito could no longer be reprimanded with any penalty. The tenure commission's hands were

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ted by the ex-judge's well-calculated action.

Our complaint remains directed at the Michigan Supreme Court for its slow investigation into allegations against Scandirito from the day he took a paid leave from the bench last February. The state's high court changed that to a paid suspension in April.

From the day Scandirito began his leave, he's collected nearly \$100,000 in salary payments.

One could see how the judge would be able to collect his weekly paycheck while negotiating court settlements with some of his accusers, who in their lawsuits said the judge had sought sexual favors in return for his help in court business ranging from traffic tickets to financial crimes.

But the most pressing question remains unanswered.


When a member of the judiciary comes under investigation of misconduct and abuse of authority, why is the case allowed to drag on for 11 months while the accused continues to receive a weekly paycheck?

The snail-like pace of the Michigan Supreme Court placed a nearly \$100,000 burden on the state's taxpayers.

In today's letter box is a letter from the judge.

Please note the line: "Although many of the allegations are untrue, some are true."

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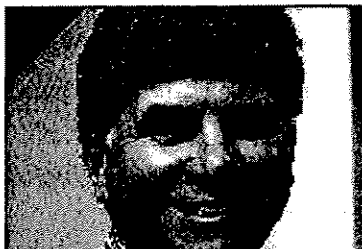
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TRAVERSE CITY
RECORD EAGLE

November 24, 2002

The ball is in judge's court, so to speak



By **BILL THOMAS**
Record-Eagle editor

Dear readers:

As we wait for the granddaddy of all governmental tortoises, the Michigan Judicial Tenure Commission, to locate and blow the dust off its copy of the Code of Judicial Conduct, the Judge Thomas Gilbert pot-smoking mess rivets community interest.

As it should.

Here we have a sitting judge, openly participating in an activity that clearly violates the law and runs counter to the canons of ethics he is sworn to uphold, vowing to hang tough and become "a great judge."

And please, all you marijuana reformers out there, spare me the philosophical claptrap about whether the weed should be legalized. That's not the issue. The difference between right and wrong is the issue. As is the institutional integrity of the judiciary.

The point — and it's the only point — is the judge violated the law, and as a result, he has tarnished the judiciary.

This is not to mention the message being sent to young people. Is there anyone who thinks for one second that kids aren't watching how we "adults" deal

with this?

Fortunately, as the Tenure Commission hides, waiting for the matter to blow over, the board of governors of the area Bar Association was willing to take a stand last week. It said, in essence, "Judge, you're an embarrassment. Do the right thing. Resign."

The bar's gutsy three-page statement was the strongest call yet from the community urging Gilbert to step down. Earlier, Circuit Judge Philip Rodgers cast doubt on Gilbert's ability to effectively continue on the bench.

As the controversy swirled late last week, I wondered what the person who "reported" the judge was thinking as she watched events take place. When the story broke a couple of weeks ago, we were told that a woman from Elk Rapids observed the judge puffing on a marijuana cigarette at a rock concert in Detroit and reported it to the court.

As it turns out, it wasn't quite that clear-cut. The woman's husband told me when I called him it was he who started the chain reaction, not his wife.

The man is an acquaintance of Gilbert and, in fact, did some "shirt tail" campaigning for him during his election campaign two years ago.

"It's been interesting to watch this whole thing," the man said. "I certainly didn't intend to cause this much trouble."

The way he tells the story, he and his wife were part of a group of eight people, including Gilbert, who attended the concert. The man's wife was "obsessed" about "what was going on" — pot smoking in the crowd.

"Then my wife pointed out to me that Tom was doing it, too," he recalled. "That really upset her."

Later, the man mentioned the incident to two officials in Antrim County. One, a judge, didn't respond. The second, also an officer of the court, called the man after a few days and said he had to do something about the information he had been given.

That lit the fuse.

A few days later the man was contacted by Michael

Haley, chief judge of the 86th District Court, for verification of the details. Then came a visit by Gilbert, who, the man said, was contrite and apologized.

The rest is history.

Gilbert, issuing a public statement recommended by a local public relations firm in which he admitted the activity, went on leave. He is now in a Minnesota rehab clinic.

"I had no idea all this would happen," the Elk Rapids man said of his conversations. "This has not been fun to watch and it's not been fun to read. My wife didn't tell anyone. If she told anyone, it was me."

It hasn't been "fun" for anyone. But the man, the Antrim official, the local judiciary and the legal community have done the right thing.

Now it's Judge Gilbert's turn.

Sincerely,

Bill Thomas

Editor



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☐ *The Grand Rapids Press (Grand Rapids, MI)*, Oct 4, 2003 pA18

Mark

Judicial panel misses mark; Supreme Court right to toughen penalty for pot-smoking judge. (Editorial)(Editorial)

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Byline: The Grand Rapids Press

Michigan's Judicial Tenure Commission is responsible for holding judges accountable for misconduct. It failed miserably in suggesting lenient punishment for a drug-using judge. Fortunately, the Supreme Court showed better judgment in dispensing discipline.

The Tenure Commission wanted to impose a 90-day suspension, minus 28 days for time spent at a substance abuse facility, on Traverse City-area District Court Judge Thomas Gilbert. The judge was reported for smoking marijuana at a rock concert. He later admitted using the drug at other times as well. The Supreme Court appropriately rejected the Tenure Commission's recommendation and took stronger action last week -- suspending Judge Gilbert for six months, without pay. Mr. Gilbert, who swore to uphold the law when he became a judge, should do even more. He ought to resign. His term ends in 2004.

A judge holds a position of rare honor and public trust. The personal and professional integrity of the people behind the bench relates directly to public confidence in the equity of the judicial system. Mr. Gilbert has damaged his ability to function as an effective and respected judge. The board of governors for the bar association that represents the district served by Mr. Gilbert -- Grand Traverse, Antrim and Leelanau counties -- has called for his resignation. He ought to comply.

Mr. Gilbert has displayed incredibly bad judgment, a trait that's essential in judicial matters. He used an illegal drug at a public event, then misled the public about the extent and duration of his marijuana use. He not only damaged his credibility but opened the local judicial system and the judges who serve with him to public ridicule.

In October of last year, Judge Gilbert was spotted taking a couple of puffs off a marijuana cigarette at a Rolling Stones concert in Detroit. He was

reported to local court officials and took a voluntary leave of absence several weeks afterwards. He checked himself into an alcohol treatment center after the incident was publicized.

In his public comments, Mr. Gilbert characterized the concert incident as a one-time event that happened because his judgment was impaired by alcohol. But behind closed doors at the Tenure Commission, which operates largely in secret, Mr. Gilbert admitted he has smoked marijuana a couple of times a year since his college days. That includes the nearly two years he has been on the bench. A period in which he has fined or jailed more than 50 people for marijuana use or possession -- laws he has been guilty of breaking.

Yes, judges are human and make mistakes just like the rest of us. But as an elected official and a judge, Mr. Gilbert's life is held to a higher standard. He is expected to live up to the obligations of his position, which includes not breaking the law.

The Tenure Commission is supposed to be a watchdog agency that investigates complaints against Michigan's judges, magistrates and referees. The nine-member panel must do a better job of putting teeth in the messages it sends to judicial rule breakers, or its credibility will take a hit of its own.

One of the reasons given for the commission's recommendation of light punishment was that the marijuana incident happened during Judge Gilbert's private life. That is absurd. Is a person a judge only when wearing a judicial robe? Would a police officer shoplifting while out of uniform be similarly excused? Of course, not. Whether in their official garb or not, it's not OK for judges to break the law. Judges who don't know that shouldn't be judges.

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TRAVERSE CITY RECORD EAGLE

September 30, 2003

Commission defends judges, but not justice

Michigan's Judicial Tenure Commission has long been criticized for being overly lenient on judges who break the rules, glacially slow in making recommendations and inconsistent in bringing charges and meting out punishment.

In its case against 86th District Court Judge Thomas Gilbert the commission not only lived up to that reputation but also gave new weight to the public perception that there is one set of rules for the public and another for judges.

Commission documents in the Gilbert case paint a picture of a system built on leniency and secrecy and deeply biased toward the people it is supposed to judge - judges.

Some examples:

- Instead of holding public hearings on Gilbert's admitted and widely publicized use of marijuana at a Rolling Stones concert, the commission "engaged in negotiations" with Gilbert to "resolve this matter short of conducting formal" - and presumably public - proceedings.

- After noting that Gilbert's actions "call for a sanction that includes a significant period of suspension" and that he "should be severely sanctioned" it reverses course: "But, in light of the mitigating factors, the Commission chooses to temper justice with mercy."

- The commission recommended a censure and a 90-day suspension without pay in part because the marijuana incident happened in his "private life."

One can assume, hopefully, that if he had been puffing in the courtroom he would have really gotten in trouble - like maybe 120 days off.

The penalty for smoking marijuana, a misdemeanor, is 90 days in jail.

The penalty for possession of marijuana, a felony,

is a year in jail.

His ultimate penalty was six months off without pay.

- Because the recommendation was the result of a negotiated settlement, Gilbert had the opportunity to back out. As Supreme Court Justice Elizabeth Weaver pointed out, if that had happened the Tenure Commission could also have dropped the matter entirely, with the public never hearing his admissions of regular marijuana use in his nearly two years on the bench.

- The commission completely downplayed that fact - that Gilbert admitted that he had not only taken a couple of puffs during the Stones concert but that he had used marijuana a "couple times a year" since college, including his time on the bench. It's mentioned as a finding of fact but not brought up again.

For many people - including Weaver - Gilbert's hypocrisy merits a much harsher penalty. During his tenure on the bench, when he was, by his own admission, occasionally smoking pot, he handed down sentences in more than 50 substance abuse cases.

Clearly, that's a dual standard, as is the Tenure Commission's absurd recommendation of 90 days off.

Gilbert's actions tarnished the judicial system. The Tenure Commission's blackened it.

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The Grand Rapids Press (Grand Rapids, MI), Jan 6, 2002 pF2
Mark

**A soft touch from high court; Macomb jurist's behavior
justifies removal from office. (Editorial)(Editorial)**

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Byline: The Grand Rapids Press

A Macomb County judge who was indirectly involved in a sordid Detroit-area murder case apparently found friends on the Michigan Supreme Court.

A unanimous Supreme Court, in a decision released last weekend, reduced by half a penalty that was recommended in the case of Judge Susan R. Chrzanowski. The high court said she must remain off the bench without pay for six months. She had been suspended with pay for 17 months while her case was weighed by the Michigan Judicial Tenure Commission. The high court justices considered that to be a penalty, too.

Ms. Chrzanowski's offenses relate to the shooting death of a pregnant 29-year-old Hazel Park woman in August 1999. The killer was the woman's husband, attorney Michael Fletcher, with whom the judge was having an affair. Fletcher is now imprisoned, serving a life sentence.

During their 13-month relationship, Ms. Chrzanowski assigned Fletcher to represent dozens of indigent defendants having cases in her court, generating \$16,000 in income for him. She did not disclose to opposing counsel her relationship with Fletcher and lied to police about her relationship with Fletcher after he was arrested in the killing of his wife.

The Judicial Tenure Commission (JTC), chaired by Court of Appeals Judge William B. Murphy of East Grand Rapids, concluded last spring that Ms. Chrzanowski was guilty of judicial misconduct and should be suspended without pay for a year. The Supreme Court, while agreeing with the JTC's findings, gave Ms. Chrzanowski credit for six months of the sentence because of the 17 months she had been suspended already -- even though the suspension was at her annual salary of \$134,366.

The court noted that it took into account the "chastening effect" of the judge not being in the courtroom hearing cases. But eight months of her taxpayer-paid sabbatical was due to the high court's own leaden pace in

getting around to a ruling. Citizens outside the high court's chambers might fairly wonder at such forgiving treatment and at the judgment of these pillars of conduct who found this modest punishment so fitting. Although the Supreme Court opinion was written by Justice Stephen Markman, all six of his mates on the bench concurred.

A judge holds a position of rare honor and public trust. Indeed, public confidence in the equity of the judicial system depends directly on faith in the personal and professional integrity of the people behind the bench. With that in mind, the Supreme Court has established a Code of Judicial Conduct and is responsible for holding judges to it. Ms. Chrzanowski's behavior was an affront to that code and, as the court said, violated standards set by the Michigan Constitution and the Michigan Court Rules.

Against that background, the Judicial Tenure Commission's recommendation of a year's suspension without pay was hardly excessive. The JTC, in fact, should have gone further. The commission, which is composed mostly of judges, should have recommended Ms. Chrzanowski's removal from the bench. But when the panel took a more temperate course, the Supreme Court could have taken sterner action on its own and should have. In going the opposite way, the high court sent a very different message about what it expects of judges and what judges' obligations are to the general public.

The Chrzanowski case ought not be closed. The Legislature can step in where the Judicial Tenure Commission and Supreme Court did not. The Michigan Constitution provides for legislative removal of judges, upon the votes of two-thirds of each house. The lawmakers, in taking up the case, would be providing an independent judgment. Michigan's courts and the people they serve should have it.

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June 15, 1994

State Gives Ironclad Secrecy to Accused Lawyers

Joe Swickard Free Press Staff Writer

When Detroit attorney William House jumped out the window of his 32nd-floor office in May and landed in the midst of horrified lunchtime pedestrians, he left behind secrets of alleged professional sins that even his death could not unlock.

But months earlier in Portland, Ore., lawyer Ron Hoevet had barely left the podium of a televised news conference before word was out that some of his peers had demanded an investigation of him for possible ethics violations -- allegations that could jeopardize his license to practice law. Hoevet represented Jeff Gillooly and publicly accused his client's ex-wife, skater Tonya Harding, of taking part in the plot to attack Nancy Kerrigan at Cobo Arena.

In Oregon, all formal complaints against lawyers are open to public inspection from the time they are filed. Lawyers' reputations are on the line.

But in Michigan, a lawyer's reputation -- at least as far as the legal fraternity is concerned -- is unassailable.

Even though it leaked out that House had been under investigation by the Michigan Attorney Grievance Commission when he plunged to the pavement, the curtain of official secrecy still protected him and his professional standing. Details of the complaints were not divulged.

Michigan Grievance Administrator Philip Thomas -- the watchdog of lawyers' professional conduct -- refused to even confirm that complaints were pending against House. The secrecy is inviolate unless the Grievance Commission elects to seek formal sanctions

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such as disbarment or suspension.

Eugene Mossner, vice chairman of the grievance commission, said that's as it should be.

"I don't think there is anything to be served by saying whether there were complaints pending, other than to besmirch his reputation and hurt his family," said Mossner, a past president of the State Bar of Michigan. "Most complaints are groundless, so just saying there are a number of complaints doesn't tell us anything about a lawyer."

In fact, in Michigan and 46 other states it is impossible to tell how a lawyer is performing unless he or she is officially charged with misconduct.

Only in Oregon, Florida and West Virginia is the veil dropped.

Shaky practice is undetected

In Michigan, a lawyer could be teetering on the brink of professional collapse -- with a slew of pending investigations -- and the potential client has no way of knowing.

In the case of House, whose license was once suspended for taking clients' money, a new client could not find out that a fresh set of charges had been leveled.

While some critics charge the secrecy is little more than lawyer buddies protecting each other, others maintain the system's confidentiality is necessary to protect reputations and allow for thorough investigations.

"A lawyer's reputation is hard to repair once it has been damaged," said Michael Alan Schwartz, a former grievance administrator now in private practice in Southfield. "Is it fair to have baseless charges given out to the public? Or is it better to wait until there has been an investigation to determine whether there is some merit to the allegation?"

"I say it is better to wait."

But University of Pennsylvania legal ethics professor Geoffrey Hazard disagreed.

"My own feeling is that members of the bar

have to take the stress," he said. "We are dealing with public trust and that is often just the price of admission."

He said the Oregon experience shows an open system doesn't have the devastating effect that lawyers feared.

Oregon was the pioneer in opening up the system. But it was not a voluntary journey; it took a lawsuit by a journalist.

"I have found it has worked very well," said George Riemer, general counsel to the Oregon Bar.

While the public scrutiny at an early stage may be uncomfortable for a lawyer under investigation, Riemer said, "I guess I could say that's the price for being given a license to practice law.

"We believe, based on our experience, that public access to the records is the linchpin of earning and demonstrating the trust."

Open records, he said, shows the public how lawyers police themselves. Guaranteed confidentiality

But Michigan's Thomas said confidentiality is necessary because his office acts as an ongoing grand jury. Complainants and witnesses, he said, often need to be assured that they can speak freely without fear of retaliation.

The former assistant Wayne County prosecutor said the grand jury-style confidentiality is in line with his mission to run a "a top-notch investigative and prosecutorial agency."

He said the Michigan system gives complainants the right to appeal grievance commission decisions directly to the state Supreme Court.

That open path to the state's highest court, he said, provides balance to the system and helps prevent cronyism between commission members and lawyers under investigation.

In West Virginia, like Florida, the files are opened at the conclusion of the investigation. In that way, said Sherri Goodman, the state's chief disciplinary counsel, the public can judge how well the profession is policing its ranks without impeding active investigations.

"It could be difficult at the investigative stage if both parties are out there trading charges in public," Goodman said. "I want to be able to get the facts without the glare of publicity. But afterward, I say let people take a look at how we are doing."

Thomas said such a proposal has not been made in Michigan, but it is worth serious study.

But Schwartz and Mossner said they see no benefit to opening files for review, as is done in Florida and West Virginia, if complaints have been rejected.

The number of complaints, they said, offer no real gauge of a lawyer's ethics. In fact, said Mossner, about 85 percent of all complaints are dismissed as groundless.

Some fields of law, such as criminal defense, personal injury and divorce, generate relatively high numbers of complaints because people are unhappy with the outcome of their cases.

Mossner and Schwartz said many folks wouldn't understand the highly complex legal questions dealt with by the commission.

"Some decisions require a lot of hard reading for me, so, I think the average lay person would have difficulty understanding them," said Mossner.

But Riemer of Oregon called that "a very condescending attitude." He said lawyers have to trust the public's judgment if they're going to ask the public to trust theirs.

Lawyers, said Riemer, should be able to withstand public review of complaints brought against them.

"I thought reputations were made of sterner stuff," he said. "If a reputation is so frail that it dies in the daylight, maybe that person's in the wrong field."

HOW IT WORKS

* A complaint is filed, usually by a client, with the Michigan Attorney Grievance Commission. The file is closed to public inspection while the complaint is investigated. More than 85 percent of complaints are dismissed or resolved without formal action.

* In the remaining cases, an investigation determines if there is probable cause to believe the attorney has violated the ethical or professional conduct code spelled out in Michigan court rules. The investigation is reviewed by the grievance administrator and a recommendation is made to the nine-member commission.

* The commission, made up of six attorneys and three non-lawyers appointed by the Michigan Supreme Court, decides whether to charge the attorney with misconduct and refer the matter to the Attorney Discipline Committee for hearings. That committee also is appointed by the Supreme Court but is not limited to lawyers.

The committee appoints a three-member tribunal of lawyers to hear and judge the complaint.

* The file becomes open once charges are lodged against the attorney. The discipline hearings are open to the public. The file remains closed if no charges are brought.

* A complainant can appeal directly to the Michigan Supreme Court if he or she is dissatisfied with the decision of the administrator or commission.

HOW TO COMPLAIN: Write the Attorney Grievance Commission at 243 W. Congress, Suite 256, Detroit 48226, or call 1-313-961-6585.

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